



January 4, 2005

Mr. Charles Terreni  
Chief Clerk/Administrator  
Public Service Commission of South Carolina  
Attention: Docketing Department  
P. O. Drawer 11649  
Columbia, South Carolina 29211

RE: Docket No. 2004-219-E

Dear Mr. Terreni:

Enclosed for filing are an original and ten (10) copies of Progress Energy Carolinas, Inc.'s Response to the December 20, 2004 Petition of Beatrice E. Weaver To Investigate Disconnect of Service By Progress Energy Carolinas, Inc. and for an Order to Connect Electricity in the above-referenced docket.

Sincerely,

A handwritten signature in dark ink that reads 'Len S. Anthony'. Below the signature, the initials 'GAC' are written in a smaller, lighter script.

Len S. Anthony  
Deputy General Counsel – Regulatory Affairs

LSA:gac

cc: Office of Regulatory Staff  
Mrs. Beatrice Weaver

220461

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2004-219-E**

January 4, 2005

In the Matter of	)	<b>RESPONSE OF PROGRESS ENERGY</b>
	)	<b>CAROLINAS, INC. TO PETITION OF</b>
Petition of Progress Energy Carolinas,	)	<b>BEATRICE E. WEAVER TO</b>
Inc. To Terminate Service	)	<b>INVESTIGATE DISCONNECT OF</b>
	)	<b>SERVICE BY PROGRESS ENERGY</b>
	)	<b>CAROLINAS, INC. AND FOR AN</b>
	)	<b>ORDER TO CONNECT</b>
	)	<b>ELECTRICITY</b>

1. On December 21, 2004, Beatrice E. Weaver, 1253 Harllees Bridge Road, Dillon, South Carolina 29536 filed a petition with the Public Service Commission of South Carolina ("the Commission") asking the Commission: 1) to investigate Progress Energy Carolinas, Inc.'s ("PEC") disconnection of service to her residence at the above address on December 21, 2001; and 2) to order PEC to immediately reconnect said service.
2. Regarding her request for further investigation of PEC's actions in December 2001, there is no need to revisit a matter that has been thoroughly investigated and litigated over the past four years by both the Commission and the Courts. The rulings in every instance were in PEC's favor and this matter is now *res judicata*. The matter remains "in dispute" only in the minds of Mr. and Mrs. Weaver, who simply refuse to accept any outcome that is unfavorable to them. Following is a summary of the salient facts:

- A. In December 2000, Mrs. Weaver's husband, Gary Weaver, filed a formal complaint (Docket No. 2001-249-E) with the Commission against PEC regarding the validity of a debt then amounting to over \$3000 for unpaid electric bills (including six area lights, heat pump loans, and surge suppression equipment) at the above address, a residence owned by Mrs. Weaver and occupied by her and her husband. The Commission conducted a hearing on the matter on November 27, 2001, and subsequently issued order No. 2001-1095 on December 5, 2001 dismissing the complaint with prejudice, and upholding both PEC's determination of the amount of the debt and PEC's right to initiate disconnection procedures in accordance with Commission Rule 103-352 if said debt was not paid. On the basis of that order, and with full knowledge of the Commission, PEC disconnected the service to Mrs. Weaver's residence on December 21, 2001, for non-payment of electric bills. This debt, which at the time the account was closed out had grown to \$5,314.34, remains unpaid.
- B. There was no *ex parte* communication between PEC and the Commission as Mrs. Weaver alleges, but merely an effort by PEC to keep the Commission informed of PEC's progress in carrying out the disconnection process.
- C. Mr. Weaver's February 28, 2002 appeal of the Commission's ruling was dismissed with prejudice by the Dillon County Court of Common Pleas

on April 15, 2002, bringing this matter to an end, and rendering all subsequent claims regarding this matter *res judicata*.

D. On April 15, 2004, Mr. Weaver filed suit against PEC in the Dillon County Court of Common Pleas, essentially attempting to re-litigate some of the same issues addressed by the Commission and the Courts in the proceedings referenced above. On December 21, 2004, the Court dismissed Mr. Weaver's suit.

3. Like her request for further investigation of the disconnection, Mrs. Weaver's request for reconnection of electric service without payment of the debt is nothing new, as shown below. PEC, the Commission, and the Office of Regulatory Staff (ORS) have consistently rejected these requests in the past.

A. In early 2002, Mrs. Weaver applied for service to the house in her name but refused to pay the outstanding debt in question, contending that the debt is her husband's, not hers, i.e., the same argument made in her filing of December 21, 2004. When PEC refused, the Weavers announced that as of July 21, 2001 they were separated, and that Mr. Weaver now resides at 701 W. Palmetto Street in Florence, South Carolina, and (as Mr. Weaver stated in his response to PEC's Interrogatory #1 in this Docket) at 259 W. Calle de Caballos Street in Tempe, Arizona. PEC again refused to connect service without payment of the debt, citing paragraph 2(c) of PEC's Service Regulations on file with and approved by the Commission: "Company may refuse to furnish electric service to any Applicant, or Customer, who at the time is



indebted to Company for electric service previously supplied to such Applicant or Customer, or any other member of his household, or business, in any area served by Company.”

- B. Mrs. Weaver has subsequently made several other attempts to get electric service to the house connected without paying the debt. In one instance she allegedly leased the house to a corporation she formed, Saint Elizabeth of the Roses Benevolent Society, Inc., and applied for electric service in the name of the Society’s corporate treasurer, portraying the house as a church. In another, she attempted to apply for service in the name of “Be My Guest Wellness Retreat,” Bea Wallenstein, Director. An April 14, 2004 letter from Mrs. Weaver’s attorney, Daniel H. Shine, asked PEC to connect the service in order that Mrs. Weaver might “begin renting out rooms to make money to live on.” Mr. Shine’s letter also contended that the debt is Mr. Weaver’s solely, and that PEC’s refusal to grant Mrs. Weaver electric service without payment of the debt is “legally and morally unjustified” and violates Commission rules. PEC responded to Mr. Shine on April 28, 2004 (see Attachment 1) documenting its case for holding Mrs. Weaver responsible for the debt, and citing South Carolina case law (Haynsworth v. SCE&G, 488 F.Supp. 565 [USDC, SC, 1979]) in which the court upheld SCE&G’s right to refuse service in a husband-wife situation virtually identical to the Weaver case.

C. Mr. and Mrs. Weaver are now attempting to exploit the recently-publicized death of an elderly electric utility customer in the Piedmont region, Elizabeth Verdin, whose electricity had been terminated for non-payment, to petition the Commission to order PEC to reconnect service to the house in Mrs. Weaver's name without repayment of her debt, on the grounds that she too is elderly and in poor health. As explained below, any similarity between Mrs. Weaver and Mrs. Verdin stops with their age and health.

1. Mrs. Verdin was apparently financially unable to pay her electric bills. Mrs. Weaver is capable but simply refuses to pay her bills. Mrs. Weaver is not destitute. She lives in an 8000 square foot house on a 10-acre piece of property, both of which she bought with cash; she also owns a 206-acre tract of farmland on the same road, and owns properties in Hawaii and California. She is apparently able to afford an attorney and the services of Duke Medical Center.
2. Mrs. Verdin apparently was without immediate family or friends to check on her welfare or to offer her shelter until her service could be reconnected. On the other hand, Mrs. Weaver's husband apparently spends much of his time at the property (in fact he admitted to PEC on November 29, 2004 that he lives in one of the other buildings on the property "from time to time"), and assists her with driving, shopping, etc., as

she states in paragraph 2 of her Affidavit dated December 20, 2004. The often identical language in their legal briefs also suggests that there is close collaboration between Mr. and Mrs. Weaver in preparation of the more than 60 letters, memos, affidavits, and pleadings generated by Mrs. Weaver in the past 12 months in this docket.

3. Mrs. Weaver is not living in a house without electricity, as evidenced by the above-referenced list of documents that Mrs. Weaver has sent the Commission in the past 12 months, virtually all of them transmitted by a FAX machine in her home. She has at least a limited amount of electricity in her home provided by a generator (according to Mr. Weaver) and sometimes by extension cords from one or both of the other metered buildings on the property. Mrs. Weaver also states in her Exhibit C that she has made arrangements for running water in the house despite the disconnection of her electricity (Paragraph 8: "Also I was denied electric power for my water well pump and had to resort to TRICO water supply at considerable expense...").
4. Mrs. Weaver's electricity was terminated over three years ago following a Commission hearing and the issuance of a Commission Order authorizing the termination. Mrs. Verdin's electricity was simply terminated pursuant to her electric



supplier's standard service disconnection procedures after she failed to make payment.

5. Mrs. Weaver has other options to fall back on. She maintains metered electric service to two other buildings on her property, including one less than 200 feet from her house with kitchen and bathroom facilities where she could presumably live if she so desired.
4. In dealing with Mrs. Weaver, PEC has acted in accordance with the Commission's rules regarding disconnection of customers with medical problems. To paraphrase the applicable portions of Commission Rule 103-352(a)3, utilities may not disconnect power between December and March to any customer who provides a valid doctor's certification on a form provided by the utility stating "that termination of electric service would be especially dangerous to such person's health," *and* "that such customer is unable to pay in full the amount of charges due for electrical service..." Such certificates are valid for 30 days, and may be renewed no more than three times. This disconnect moratorium does not apply to Mrs. Weaver because: 1) none of the doctors' statements provided by Mrs. Weaver (nor any of Mrs. Weaver's letters or pleadings) have even suggested that she lacks the resources to pay her bills; and 2) the rule only states conditions under which utilities may not disconnect power—it does not require utilities to reconnect power for customers already disconnected for non-payment on medical grounds brought to light after disconnection has taken place.

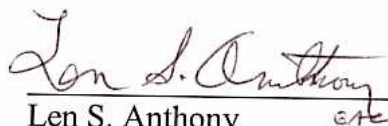


5. In summary, rather than pay a debt that has been found by the Commission to be valid in order to have her electric service restored, Mrs. Weaver is attempting to use the Elizabeth Verdin tragedy to obtain re-connection of electric service to her 8000 square foot residence. Rule 103-352(a)3 is designed to protect poor and seriously ill customers with nowhere else to go from having their electricity disconnected during the winter because they cannot afford to pay their monthly bills. The rule is not intended to allow affluent people to avoid paying their lawful debts.

WHEREFORE, PEC requests that the Commission deny the December 20, 2004 Petition of Beatrice E. Weaver To Investigate Disconnect of Service by Progress Energy Carolinas, Inc. and for an Order to Connect Electricity.

Respectfully submitted this the 4<sup>th</sup> day of January, 2005.

PROGRESS ENERGY CAROLINAS, INC.



\_\_\_\_\_  
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Progress Energy Service Co., LLC  
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Raleigh, North Carolina 27602-1551  
Telephone: (919) 546-6367  
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E-mail: [Len.Anthony@pgnmail.com](mailto:Len.Anthony@pgnmail.com)  
Counsel for Progress Energy



**Progress Energy**

**Attachment 1**

April 28, 2004

Mr. Daniel H. Shine  
911 West Hampton Street  
Dillon, South Carolina 29536

RE: Application for Service

Dear Dan:

I am responding to your April 14, 2004 letter concerning Beatrice E. Wallenstein's (a/k/a Mrs. Gary Weaver) request for electrical service to 1253 Harllees Bridge Road in Little Rock, South Carolina. I am returning the \$100.00 check from Be My Guest Wellness Retreat for deposit to establish electric service. Progress Energy Carolinas, Inc. (PEC) stands by its previous refusal to connect service to the main house at 1253 Harllees Bridge Road until the Weavers' \$5,314.34 in unpaid electric bills at this location is paid.

You state that for some years Mrs. Weaver has been caught in the middle of a dispute between Progress Energy and her husband Gary Weaver. This is an incorrect characterization. First, there is no dispute in the eyes of PEC or the South Carolina Public Service Commission or the courts, only a refusal by Mr. and Mrs. Weaver to pay back bills that they owe PEC. The Public Service Commission has ruled that the debt is owed to PEC. Secondly, this "dispute" is not simply between Gary Weaver and PEC, nor is Mrs. Weaver innocently caught in the middle. The fact is that Mr. *and* Mrs. Weaver, regardless of their present alleged living arrangements, are both inextricably tied to this debt, as you will see.

A review of pertinent public records indicates that a corporation named Renaissance International, Inc. owned by Mrs. Weaver bought the house in question in June 1994. The house is an 8,000 square foot plantation home on 9.4 acres of land. The purchase price of \$185,000 was paid in cash. In addition, the corporation bought a 206-acre tract of land on Harllees Bridge Road for \$135,000. Less than two years later the corporation, which by then was in forfeiture, sold the house and associated property to Mrs. Weaver for \$666,000. Mrs. Weaver secured a \$375,000 mortgage on the property. Our research shows that on December 31, 2003, the house and property were deeded to a living trust, of which Mrs. Weaver is the trustee/trustor.

South Carolina Public Service Commission rules pertinent to this case provide that the responsibility for a debt for unpaid electric bills is in effect shared by the members of the household who benefited from the service when and where the debt was incurred, and that in the



event that one of those members of the household subsequently attempts to establish service at the same location, the utility can refuse to connect service until the debt is paid. That concept is even more clear-cut when the only two members of the household are, as in this case, husband and wife.

The validity of both this interpretation and the rationale for this interpretation were directly addressed in the case of Haynsworth v. SCE&G, 488 F.Supp. 565 (USDC, SC, 1979). In this case electric service was in the husband's name, the couple separated, and the wife subsequently refused to pay the bill, claiming, just as Mrs. Weaver is now claiming, that the debt was the husband's responsibility as long as the account was in his name. The wife then applied for service in her own name at the same address. SCE&G refused to open an account in her name, relying on provision 4(b) of SCE&G's filed service regulations which reads: "Service will not be supplied by the Company to any applicant who is then indebted to the Company or who, at the time of application, is a member of the household of a former customer who is indebted to the Company, except upon payment of such indebtedness." Note the similarity to the relevant provision 2(c) in PEC's filed Service Regulations, which reads: "Company may refuse to furnish electric service to any Applicant, or Customer, who at the time is indebted to Company for electric service previously supplied to such Applicant or Customer, or any other member of his household, or business, in any area served by Company." (In the case of Clarke v. General Telephone Company, 232 S.E.2d 26 (1977), the South Carolina Supreme Court held that a utility's service regulations have the force and effect of law.)

The court upheld the service regulation as "necessitated by the nature of defendant's business":

This Court will not sanction a holding that would require defendant to continue service to a dwelling, even though the present account has a large overdue balance, just because a request is made by another member of that dwelling to put the account in his or her name. Such a holding would render the defendant powerless to collect its due and bind it into providing continuous utilities service without compensation, other than the minimal deposit made by the new applicant. If this Court were to rule as plaintiff urges and strike down defendant's section 4(b), every member of every household would be permitted to take a swing at the power company, amassing a substantial bill at the price of a small deposit. ...

Plaintiff asks the Court to disregard totally the most important fact of this lawsuit. That fact is that she and other applicants in her position have, at the time of application, received [\*\*11] the benefit of defendant's services without compensation to the defendant. If this Court were to find defendant's section 4(b) unlawful, defendant would be left with little hope of resolving [\*569] its outstanding accounts out of court. No longer could it use the denial of future service to those who apply and who are indebted to the defendant for past consumption as a means of insuring payment of its accounts. Defendant would have no recourse for collection except the courts, because the threat of termination would become meaningless...

The provision of defendant's General Terms and Conditions that plaintiff seeks to have set aside expressly enacts the following regulation of the state's Public Service Commission:



No electrical utility shall be required to furnish its service or continue its service to any applicant who, at the time of such application, is indebted, or any member of his household is indebted, under an undisputed bill to such electrical utility for service, previously furnished such applicant, or furnished any other member of the applicant's household or business. R103-342(k) S.C. Code (1976).

It is undisputed that the plaintiff resided in her Springlake Road home and used defendant's services during her separation from her husband. When she requested the account to her home be put in her name in September, 1975, she was indebted to defendant, and the above regulation directed and fully warranted defendant's refusal to open a new account in her name.

The main question, then, is whether Mrs. Weaver was a member of the household during the period when the debt was incurred, and the information below leaves no doubt that not only was she a member of the household, but in fact it was *her household*:

- First, during the five-year period over which the debt was incurred (1996-2001) Mrs. Weaver owned the house and property, solely and outright. In fact, Mr. Weaver stated to the Public Service Commission in November 2001 that he owns no personal property at all; the couple's assets (at least as of then) were all in Mrs. Weaver's name.
- Second, not only was Mrs. Weaver a member of the household during that five-year period, she was for much of the time the sole occupant, and thus enjoyed 100% of the benefits of the electric service during the time the debt was incurred. Gary Weaver testified before the Public Service Commission that during those years his business dealings took him out of the country for months at a time and that Mrs. Weaver stayed home and took care of the house and property.
- Mrs. Weaver accepted the burden of paying the electric bills. During Mr. Weaver's overseas sojourns the electric bills came to the Harllees Bridge address. Although they were addressed to Mr. Weaver, Mrs. Weaver opened them and paid them, using funds drawn on the account of Renaissance International, Inc., either in the form of checks or by her authorizing PEC to draft Renaissance's bank account.
- Mrs. Weaver handled all matters related to the electric service account with PEC (then called Carolina Power & Light Company, or CP&L) during the period in question. Our records show that Mrs. Weaver called PEC some forty-five times during that period, for a multitude of reasons: to establish heat pump loans with CP&L, to lease surge suppression equipment from CP&L, to have CP&L install five area lights on her property, to negotiate equal payment plan billing, to dispute the amounts of numerous bills, to make payment arrangements to avoid disconnection, and so on.

In short, the account was for all intents and purposes Mrs. Weaver's. Given the fact that she had financial control of the household during that five-year period, and was clearly making the day-to-day decisions on when and whether to pay the electric bills, Mrs. Weaver appears to bear the main responsibility for allowing the account to fall into such arrears. This leads to the issue of Mrs. Weaver's "unclean hands." Under this principle of equity, Mrs. Weaver cannot enjoy the benefit of the electricity provided to her residence, participate in the incurrence of the debt and then attempt to avoid responsibility by asserting that it is her husband's debt.



April 28, 2004

In addition, South Carolina's common law doctrine of necessities has been broadened by case law over the years to allow for either spouse to be held responsible for debts for necessities incurred by the other. *Peebles v. Disher*, 310 S.E. (2d) 823 (S.C. App. 1983); *Lee v. Lee*, 237 S.C. 532, 118 S.E. (2d) 171 (1961); *Campbell v. Campbell*, 200 S.C. 67, 20 S.E. (2d) 237 (1942); *Hiott v. Contracting Services*, 276 S.C. 632, 281 S.E. (2d) 224 (1981). Thus, an additional basis for Mrs. Weaver's liability for the account is the fact that electricity is a necessity. She and her husband consumed this necessity and they both are responsible for payment for this necessity.

As you may know, after the Public Service Commission decided in PEC's favor in a protracted complaint proceeding brought by Gary Weaver, PEC disconnected service to the house in December 2001 for non-pay. It has remained off ever since. Prior to her latest proposal to convert the house into a wellness retreat ("Be My Guest" LLC), Mrs. Weaver tried to get PEC to reconnect the service without paying the debt. In 2002, for instance, she founded a non-profit religious organization called St. Elizabeth of the Roses Benevolent Society, Inc., which was to be headquartered at the Harllees Bridge Road estate, and used a Ms. Dorothy Roscinsky, Corporate Treasurer of the society, to initiate contacts with PEC.

Finally, Mr. Weaver still maintains electric service in his name to an office/cottage behind the main house on the Harllees Bridge Road property, and whenever our meter readers and other personnel visit the property, he is typically there.

I am sending you this fairly lengthy but not exhaustive history of the electric service situation for Mrs. Weaver so that you will understand PEC's steadfast refusal to reconnect service to Mrs. Weaver's residence until this debt is paid and you will understand that there is no legal or equitable basis for Mrs. Weaver to institute litigation.

Sincerely,



Len S. Anthony  
Deputy General Counsel – Regulatory Affairs

LSA:gac

cc: David Butler, SCPSC

Attachment

// BE MY GUEST // WELLNESS RETREAT  
RENAISSANCE ESTATE  
BEA WALLENSTEIN DIRECTOR  
1253 Harlees Bridge Rd - A  
Dillon, SC 29536

BE. 551

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